

Breakout session A

Tenancy Management

Victoria Osler and Alistair Cantor

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What are we covering?

1. Housing Fraud
 2. Sub-letting
 3. Right-to-buy
 4. Hoarding
 5. Supporting victims of domestic abuse
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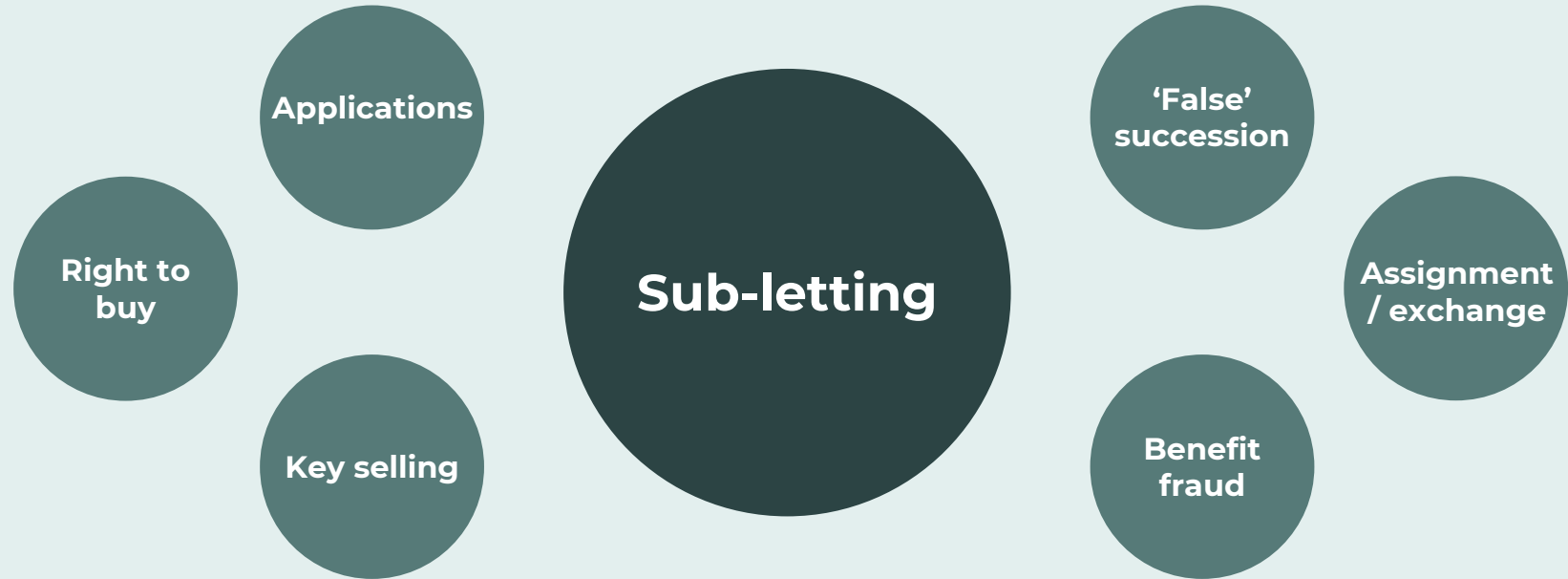


Housing fraud

Alistair Cantor



What is social housing fraud?



Three Areas of Focus

**Routes to
redress**

**Why exercise
them**

**Evidence
gathering**

(1) Routes to redress

Civil

- Claims for possession of property
- Unlawful profit orders
- Tort claims in deceit
- Rescission

Criminal

- Housing Act 1996
 - s.171/s.214 False statements, withholding information, and failure to disclose change of circumstances
- Fraud Act 2006
 - s.1-4 inc. fraud by false representations
- Prevention of Social Housing Fraud Act 2013
 - s.1/s.2 Sub-letting / parting with possession (secure tenancies and assured tenancies respectively)

Remedies



(2) Why exercise them



(3) Evidence gathering

“...the decision of the court is not necessarily the objective truth of the matters in issue. Instead it is the most likely view of what happened, based on the material that the parties have chosen to put before the court, taking into account to some extent also what the court considers that they should have been able to put before the court but chose not to.”

Adepoju v Akinkola [2016] EWHC 3160 (Ch)

Common issues with evidence in housing fraud claims

01

Quality of
neighbour
evidence

02

Sub-tenant not
available to give
evidence

03

Limited positive
evidence from
defendant

04

Confusion as to
the nature of
tenancies



Three key cases



- *LB Islington v Boyle* [2011] EWCA Civ 1450; [2012] HLR 18
 - Standard of proof
- *LB Lambeth v Vandra* [2005] EWCA Civ 1801; [2006] HLR 19
 - Absence of direct evidence is not fatal
 - Existence of alternative explanation does not mean the case is not proved
 - Inferences can be drawn from the primary facts on the balance of probabilities
- *LB Southwark v Ibidun* [2017] EWHC 2775 (QB); [2018] HLR 5
 - Evidence must be obtained pre-trial

Useful sources of evidence

Utility bills

**Credit
history /
electoral
roll**

**Evidence
from
neighbour
or sub-
tenant**

**Evidence re:
2nd property**

**Schooling
location**

**Interviews
under
caution / s.9
statements**



01

Documents

02

**Witness
evidence**



The evidence gatherer's toolkit



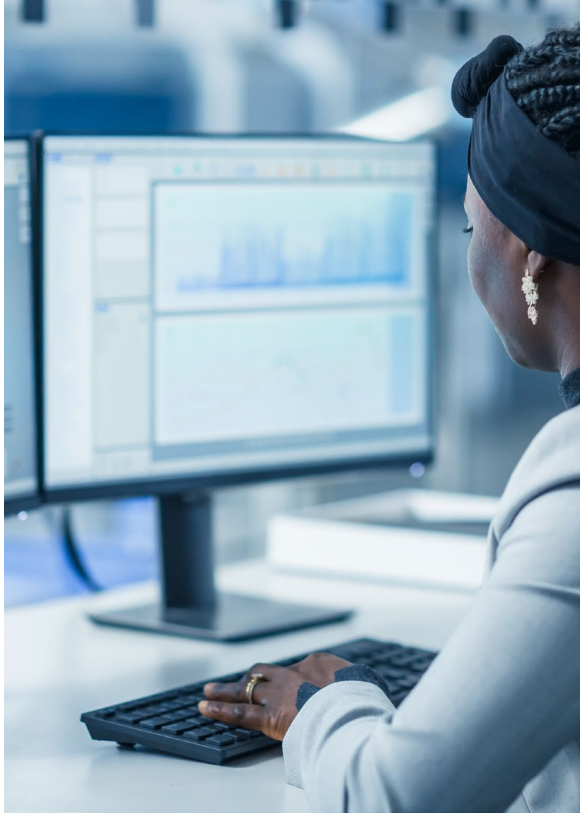
Pre-issue



Visits to the property

- Unannounced or arranged
- Question the occupier
 - How they rented (e.g. was it advertised)?
 - Who lives there?
 - How is rent paid?
 - What rooms are they allowed to occupy?
 - Does D come to property or store things?
 - Who has keys?
 - Documents e.g. tenancy agreement, utility bills, rent receipts
- Take photos and notes re: interior of property (e.g. locks on internal doors)
- Inquire with neighbours





Desktop inquiries

- Persons registered at address for voting and council tax
- Housing benefit/other DWP checks
- Equifax, Experian, 360 checks (may show links to other properties)
- Disrepair logs – who is reporting, who is on site affording access etc
- Records of tenancy inspections
- Rent account – how and where is it paid
- Which school does D's children go to and what contact details does the school have
- Address/contact details held by D's doctor/dentist
- Social media
- Send letters to different addresses with different reference numbers and if tenant phones ask for the reference

Documents and information from 3rd parties

GDPR

- GDPR and ICO oversight regulates disclosure of information from 3rd parties
- Lawful bases for disclosure include:
 - Public task
 - Legitimate interests esp. private bodies
- GDPR exemptions/s.15 DPA 2018
 - Prevention or detection of crime – Schedule 2, paras. 2-3
 - Necessary for purpose of or in connection with legal proceedings – Schedule 2, para. 5

Other powers and issues

- Data sharing – s. 68 of the Serious Crime Act 2007 / Schedule 1 para 14 DPA 2018
- If local authority:
 - Prevention of Social Housing Fraud Act 2013, s.7-9
 - Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014
- Norwich Pharmacal orders



Post-issue



Part 18 Requests

- Received a defence full of bare denials? Consider CPR 18:

18.1 (1) The court may at any time order a party to –

(a) clarify any matter which is in dispute in the proceedings; or

(b) give additional information in relation to any such matter,

whether or not the matter is contained or referred to in a statement of case.

- Concise, clear and relevant requests will oblige a defendant to provide information verified by a statement of truth.
- If requests not met at all, or inadequate responses, apply to court for sanctions (typically unless order with costs of the application payable by D).

Orders for disclosure

- Consider applying for **specific disclosure** if disclosure from D is obviously deficient.
 - Make enforceable by unless order
 - If you can then prove D has not complied, opportunity for summary disposal.
- **Third-party disclosure** orders can be a useful tool e.g. mortgage companies or other landlords



Sub-letting

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Categories of 'sub-letting'

**Sub-letting
proper**

**Parting with
possession**

**No longer only
or principal
home**

Sub-letting proper

- Sub-letting conceptually straightforward – creation of sub-tenancy
- Street v Mountford criteria
- Short term (e.g. AirBnB style lets) does not preclude a sub-let
- Example cases: Brent LBC v Cronin (1998) 30 HLR 43

'Parting with possession'

- Should be given its **normal and technically legally correct** meaning (*Akici v L.R. Butlin Ltd* [2005] EWCA Civ 1296, [2006] 1 W.L.R. 292 at [26])
- Includes right to occupy land to the **exclusion of others** (*Clarence House Ltd v National Westminster Bank plc* [2009] EWCA Civ 1311; [2010] 1 WLR 1216 at [28])
- Includes possession arising from the **receipt of rents or profits** and the right to receive them (*Lyell v Kennedy* (1889) 14 App Cas 437)
- Parting with possession of *part of the property only* will likely be breach of tenancy only

'Only or principal home'

- Whether D has ceased to occupy the premises as their OOPH is a **question of fact and degree**.
- It is an **objective** question (*Ujima Housing Association v Ansah* (1997) 30 HLR 831).
- If D has ceased to occupy **temporarily** it does not mean the premises is no longer their OOPH (*Crawley Borough Council v Sawyer* (1987) 20 HLR 98).
- Property can remain OOPH even if the tenant habitually sleeps elsewhere and only returns by day (*LB Hackney v Weintraub* [2024] EWCA Civ 1561).
- Even where D has ceased to occupy as OOPH, if they have resumed occupation as their OOPH by the time of the expiry of any NTQ they **regain statutory security of tenure** (*Hussey v Camden LBC* (1995) 27 HLR 5).

The burden of proof

- LL adduces **adequate evidence** to compel the inference that D has parted with possession and/or ceased to occupy as their OOPH.
- E.g. absence by D may be sufficiently continuous, long, or in combination with other factors, so as to infer they no longer reside there as their OOPH.
- See also LB Lambeth v Vandra [2005] EWCA Civ 1801; [2006] HLR 19
- Burden shifts to D to **rebut inference** (Ujima Housing Association v Ansah (1997) 30 HLR 831; LB Lambeth v Vandra).



Right-to-buy

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Changes already in place

**Reductions to
max discounts**

**Extension of
cost floor
period**

**All receipts
retained**

Changes to come

**Extended
qualifying
period**

**Revised
discount
structure**

**35-year
exemption for
new-builds**

Implications

**Higher
volumes
currently**

**Likely
decrease in
future
applications**

**Increased risk
of fraud?**



Hoarding

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What is hoarding?

01

Possessions

Acquisition and failure to discard possessions that appear to be of little value

02

Clutter

Living spaces sufficiently cluttered so as to preclude activities for which those spaces were designed

03

Distress

Significant distress or impairment in functioning caused by hoarding

Statutory powers

01

Mental Health

Mental Health Act 1983, s.2,
s.135

Care Act 2014: s.42

02

Environmental

Public Health Act 1936, s.84
Public Health (Control of
Disease) Act 1984, s.2A
Improvement notice
Prohibition notice

03

Landlord

- Injunction: Anti-social Behaviour, Crime and Disorder Act 2014
- Possession, Grounds 12, 13, 14 Housing Act 1988
- Possession, Grounds 1 and 2, Housing Act 1985
- Capacity, *Wooley v Wooley*



Thiam v Richmond Housing Partnership 2025 [EWHC] 933 KB



Possession claim – Grounds 12, 13 and 14:

First instance decision: HHJ Luba KC:

“Because of her delusion, the [tenant] believes that some or all of this material is important for the purposes of her business in reselling second-hand clothes. Whatever the nature of the delusion, the simple fact of the matter is that the premises are grossly unsightly. They are, in the relevant weather conditions, smelly. They provide harbourage for vermin and they are grossly unsightly.”

Disability discrimination defence: s.15 Equality Act 2010

Disability

"She suffers from a wider range of delusional disorders associated with her schizophrenia and these explain other facets of the conduct which has led to her landlord's claim for possession...I have not the least hesitation in finding that there is the necessary causal link particularly for the purpose of s.15 of the Act

Proportionality

'It wishes to see premises that it owns maintained by its tenants in a condition which does not lead to them being an eyesore, being a harbourage for rodents, and generating smells causing nuisance and other unpleasantness to those in the locality'. 'It also, obviously is a legitimate aim to ensure that tenants pay their rent and comply with their condition of tenancy.'

Grounds of Appeal

01

Recognising disability

To use the shorthand used in the section 15 itself, where the unfavourable treatment afforded by A to B is in response to things that B has done, A's unfavourable treatment of B is capable of being a proportionate means of achieving a legitimate aim even if A does not consider that B's actions were in consequence of a disability.

02

Specialist intervention

I do not consider that the obligation to act proportionally imposed by section 15(1)(b) of the 2010 Act required RHP itself to engage specialist help for the tenant. Taking such a step would go well beyond anything ordinarily or, in the circumstances of this case, reasonably within the ambit of a landlord and tenant relationship.

03

Court of Protection

- *...would have required RHP to incur significant expenditure on litigation (legal costs and no doubt also the costs of expert evidence) in pursuit of an exercise that was speculative. That would go well beyond any step that could legitimately be expected of a landlord and well beyond anything that could reasonably be considered as a requirement of a proportionate approach on the facts of this case*



Supporting victims of domestic abuse

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Domestic Abuse



Domestic Abuse: Statutory Guidance: Updated April 2023

Tell-Tale Signs
Eg. multiple
moves

Policy

Confidentiality

Somewhere to Stay

**Homeless
assistance**

Benefits

**Family
help**

**Excluding
perpetrator**

**Sanctuary
Scheme**

**New
sole
tenancy**

Family Courts

**Non-
Molestation
Order**

**Transfer of
tenancy**

**Protection
From
Harassment**



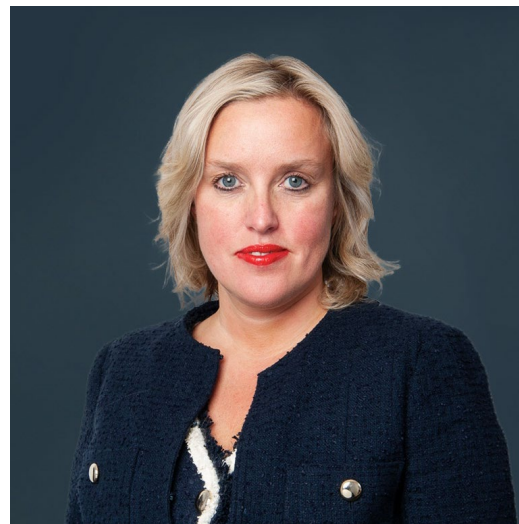
Questions?





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